IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3046 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SELVAST FOODS - Petitioner(s)

Versus

CONTROLLING AUTHORITY & 1 - Respondent(s)

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Appearance :

MR DJ BHATT for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 26/10/2005

CAV JUDGMENT

1.By filing this petition, the petitioner has prayed for to quash and set aside the orders passed by the Controlling Authority dated 8.5.1995 and 23.9.1997 and

also the recovery proceedings dated 16.12.1998. Further prayer is made to direct the respondent to repay and recover the amount of Rs.5,625/- to the petitioner with interest.

2. Heard the learned advocate for the petitioner and perused the material placed on record.

3. Though served, nobody appears on behalf of the respondents.

4. It is the contention of the learned advocate appearing for the petitioner that the number of employees engaged in the manufacturing process of the petitioner company are less than ten and, therefore, the provisions of the Payment of Gratuity Act would not apply. It is further contention of the learned advocate appearing for the petitioner that without considering anything on record, the Controlling Authority by an order dated 8.5.1995 passed the order ex parte. He further submitted that the authority has not supplied the copy of the statement / reply though demanded of Mr.R.A.Dixit on 15.2.1995. Ultimately, the petitioner preferred an appeal before the Appellate Authority who by order dated 26.5.1997 directed the Controlling Authority to rehear the matter and in spite of the order of remand, the Controlling Authority by order dated 23.9.1997 held

that the order passed by the Appellate Authority has been passed in a proceedings which is time barred and also held that no question arises for re-hearing the matter.

5. In this view of the matter and in view of the fact that the Controlling Authority has decided the matter ex parte and no opportunity of hearing has been given given to the petitioner, the matter is required to be remanded to the authority for deciding the same afresh after providing an opportunity of being heard to the petitioner as well as to the respondents.

6. Under the circumstances, the matter is remanded to the concerned authority for deciding the same afresh and after providing an opportunity of hearing and to lead the evidence to both the parties and shall decide the same as early as possible and in accordance with law and on its own merits. The concerned authority shall also supply the documents as demanded by the petitioner. It is, however, made clear that the amount of Rs.5625/- which is directed to pay to respondent No.2 is without prejudice to the rights and contentions of the respective parties and shall be subject to the final result of the proceedings.

7. Subject to the aforesaid observations and directions,

this petition is rejected. Rule is discharged. No costs.

(Sharad D.Dave,J)

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